
From: Jay Spruill [jspruill@vabankers.org]
Sent: Wednesday, July 05, 2000 4:05 PM
To: 'public.info@ots.treas.gov'
Subject: FW: Docket 2000-34



responsible alt
mortgage lendi...

Please see attached comment letter on responsible alternative mortgage lending from Walter C. Ayers, Executive Vice President of the Virginia Bankers Association. Jay Spruill, General Counsel, 804-819-4710

July 5, 2000

Manager
Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D. C. 20552

Re: Responsible Alternative Mortgage Lending, Docket No. 2000-34

Dear Sir or Madam:

I am writing on behalf of the Virginia Bankers Association to comment on the advance notice of proposed rulemaking ("ANPR") issued by the Office of Thrift Supervision concerning responsible alternative mortgage lending. Our Association represents nearly all of the commercial banks and thrifts doing business in the Commonwealth of Virginia. We appreciate the opportunity to comment on this proposal.

We are generally concerned that new OTS regulations, as proposed, would discourage legitimate lending, while failing to effectively deal with predatory lending. In this regard, banks and thrifts are not engaged in predatory lending. Indeed, as the ANPR itself notes, most predatory lenders aren't subject to the same level of supervision as federally insured banks and thrifts. Therein lies the real problem. Increasing oversight and supervision of these predatory lenders, rather than saddling all lenders, including banks and thrifts, with new (and burdensome) regulation, is a much better way to deal with the predatory lending problem.

In particular, we would urge the OTS to keep in mind the important distinction between subprime lending and predatory lending. Unfortunately, the two are often used interchangeably. Subprime lending benefits consumers; predatory lending doesn't. The pricing on subprime loans is based on legitimate risk factors; the pricing on predatory loans is based on the lender's ability to take advantage of desperate or unsophisticated borrowers. Subprime loans are fair; predatory loans often are not.

The regulatory framework should encourage subprime loans, since, without them, many borrowers will be left without credit or will fall victim to predatory lenders. Importantly, subprime loans give less-than-creditworthy individuals the chance to move beyond their past credit problems and repair their credit standing.

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The ANPR seeks comment on whether the OTS should propose new restrictions and disclosures on "high-cost" loans and whether such requirements should extend beyond loans already covered under the 1994 Home Ownership and Equity Protection Act. We would urge the OTS not to create any such new requirements.

We believe, again, that additional disclosures and restrictions would have negligible effect on predatory lending, but would significantly increase the burdens and costs on subprime loans. Predatory lenders, given the way they operate, would find ways to circumvent these kinds of new requirements. Moreover, many predatory loans might not even fall within the scope of the new category of loans subject to enhanced regulation, while legitimate subprime loans would. And, again, making it tougher for legitimate lenders, such as banks and thrifts, to make subprime loans would open the door even wider to unregulated predatory lenders.

In addition, we are very concerned about proposed limitations on the rates, charges, and other features of high-cost loans. Again, subprime loans are priced to take into account underwriting risks. Limiting what can be charged on these loans -- and even some prime loans -- would make it harder for banks, thrifts, and other legitimate lenders to offer these loans. Furthermore, certain features that are targeted in the ANPR can actually benefit consumers. For example, the ANPR seeks comment on whether financed credit insurance should be barred. Restricting any type of financed credit insurance would effectively deny consumers an economical way to avoid foreclosures on their property. Nor are increased disclosure requirements in this area the answer; there are already state insurance disclosure requirements, and predatory lenders often ignore such disclosures requirements.

Limitations on refinancing fees and prepayment penalties would also interfere with legitimate lending practices and hurt consumers. Prohibiting refinancings unless the annual percentage rate for the new loan is less than the old rate would deny a consumer's ability to convert equity in his or her house into cash. Restricting prepayment penalties would limit the ability of a lender to offer a more attractive interest rate, as the lender or mortgage investor will have to offset the loss of the protection (i.e., prepayment penalty) against losing money on the loan with a higher rate. These are but a few examples.

In short, the OTS should not overreach and hurt legitimate lending practices that benefit both consumers and lenders. A better approach is a coordinated effort between the OTS (and other federal agencies) and the states to come up with an effective way to supervise the activities of state housing creditors that today are operating with little or no supervision. This would focus efforts on the source of the problem, while avoiding the

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unintended results of increased regulation of an already overly regulated banking industry. The federal banking agencies should seek ways to make it easier for our federally insured banks and thrifts to make loans, rather than making it harder.

We appreciate the OTS considering our comments on this important matter.

Sincerely,

Walter C. Ayers
Executive Vice President

WCA/sk